

§ 30.130

Subpart D—Recusal of a Judge or ADM

§ 30.130 How does a judge or ADM recuse himself or herself from a probate case?

If a judge or ADM must recuse himself or herself from a probate case under § 4.27(c) of this title, the judge or ADM must immediately file a certificate of recusal in the file of the case and notify the Chief ALJ, all interested parties, any counsel in the case, and the affected BIA agencies. The judge or ADM is not required to state the reason for recusal.

§ 30.131 How will the case proceed after the judge's or ADM's recusal?

Within 30 days of the filing of the certificate of recusal, the Chief ALJ will appoint another judge or ADM to hear the case, and will notify the parties identified in § 30.130 of the appointment.

§ 30.132 May I appeal the judge's or ADM's recusal decision?

(a) If you have filed a motion seeking disqualification of a judge or ADM under § 4.27(c)(2) of this title and the judge or ADM denies the motion, you may seek immediate review of the denial by filing a request with the Chief ALJ under § 4.27(c)(3) of this title.

(b) If a judge or ADM recuses himself from a probate case, you may not seek review of the recusal.

Subpart E—Claims

§ 30.140 Where and when may I file a claim against the probate estate?

You may file a claim against the trust estate of an Indian with BIA or, after the agency transfers the probate file to OHA, with OHA.

(a) In a formal probate proceeding, you must file your claim before the conclusion of the first hearing. Claims that are not filed by the conclusion of the first hearing are barred.

(b) In a summary probate proceeding, if you are a devisee or eligible heir, you must file your claim with OHA within 30 days after the mailing of the notice of summary probate proceeding. Claims of creditors who are not devisees or eligible heirs will not be consid-

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ered in a summary probate proceeding unless they were filed with the agency before it transferred the probate file to OHA.

§ 30.141 How must I file a claim against a probate estate?

You must file your claim under 25 CFR 15.302 through 15.305.

§ 30.142 Will a judge authorize payment of a claim from the trust estate if the decedent's non-trust estate was or is available?

The judge will not authorize payment of a claim from trust or restricted property if the judge determines that the decedent's non-trust estate was or is available to pay the claim. This provision does not apply to a claim that is secured by trust or restricted property.

§ 30.143 Are there any categories of claims that will not be allowed?

(a) Claims for care will not be allowed except upon clear and convincing evidence that the care was given on a promise of compensation and that compensation was expected.

(b) A claim will not be allowed if it:

(1) Has existed for such a period as to be barred by the applicable statute of limitations at date of decedent's death;

(2) Is a tort claim that has not been reduced to judgment in a court of competent jurisdiction;

(3) Is unliquidated; or

(4) Is from a government entity and relates to payments for:

(i) General assistance, welfare, unemployment compensation or similar benefits; or

(ii) Social Security Administration supplemental security income or old-age, disability, or survivor benefits.

§ 30.144 May the judge authorize payment of the costs of administering the estate?

On motion of the superintendent or an interested party, the judge may authorize payment of the costs of administering the estate as they arise and before the allowance of any claims against the estate.

§ 30.145 When can a judge reduce or disallow a claim?

The judge has discretion to decide whether part or all of an otherwise